Canada Industrial Relations Board Conseil canadien des relations industrielles

C.D. Howe Building, 240 Sparks Street, 4th Floor West, Ottawa, Ont. K1A 0X8
Édifice C.D. Howe, 240, rue Sparks, 4e étage Ouest, Ottawa (Ont.) K1A 0X8

Reasons for decision

George Shmig,

complainant,

and

Heljet International Inc.,

respondent.

Board File: 30038-C
Neutral Citation: 2014 CIRB **724**
April 30, 2014

The Canada Industrial Relations Board (Board) was composed of Mr. Graham J. Clarke, Vice-Chairperson, sitting alone pursuant to section 156(1) of the *Canada Labour Code (Part II – Occupational Health and Safety)* (*Code*).

Parties' Representatives of Record

Mr. George Shmig, on his own behalf;

Mr. N. David McInnes, for Heljet International Inc.

Canada

I. Nature of the Complaint

[1] This case examines a situation where a self-represented litigant has failed, despite receiving time extensions and multiple opportunities, to provide a more particularized pleading. The Board has concluded the complaint must be dismissed.

[2] On June 26, 2013, the Board's Vancouver office received from Mr. George Shmig a complaint under Part II of the *Code* alleging that his employer, Helijet International Inc. (Helijet), had taken action against him contrary to section 147.

[3] Helijet, for its part, alleged that any actions it took related to Mr. Shmig's job performance.

[4] The Board asked both parties for more focussed submissions since there appeared to be a lack of understanding of this Board's limited jurisdiction under Part II of the *Code*.

[5] Mr. Shmig did not provide his submission within the time the Board fixed. However, the Board extended that time frame after Mr. Shmig advised it that he had moved.

[6] Despite receiving that extension, Mr. Shmig failed again to provide the requested submission.

[7] Given Mr. Shmig's failure to file his submission, and his failure to open the Board's later registered letters, or keep the Board advised of any further changes in address, his complaint has been dismissed.

[8] These are the reasons for the Board's decision.

II. Background and Facts

[9] The Board received Mr. Shmig's complaint on June 26, 2013. The complaint, along with its attachments, raised various matters, several of which fell outside the Board's jurisdiction.

[10] For example, the Board does not determine alleged contraventions of the *Code*; that is a role assigned to health and safety officers. Neither does the Board determine disputes involving differences of opinion about the *Canadian Aviation Regulations*.

[11] Nonetheless, there did appear to be some vague references to Mr. Shmig being suspended over what he suggested were safety concerns. Helijet disagreed and stated its actions resulted solely from performance issues.

[12] In *Shmig*, 2014 CIRB LD 3153 (*Shmig LD 3153*), the Board requested more focussed submissions after highlighting its limited jurisdiction under Part II of the *Code*:

> The Board has now reviewed the parties' pleadings. Some of the allegations in the parties' pleadings raise the issue of the Board's limited role under Part II of the *Code*.
>
> Before deciding whether it will hold an oral hearing, the Board wanted to ensure the parties were aware of some of its recent cases commenting on its jurisdiction. As sections 133 and 147 make clear, the Board's jurisdiction concerns alleged disciplinary reprisals.
>
> (page 3)

[13] After including an extensive extract from recent cases about its jurisdiction, the Board requested more focussed pleadings and established a timetable for the parties:

> Accordingly, the Board will provide both parties with an opportunity to fine tune their current written submissions in order to focus on the jurisdiction the *Code* has assigned to the Board. The following timetable sets out the time limits for those supplementary submissions:

Party	Submission	Due Date
Mr. Shmig	Supplementary submission	February 3, 2014
Helijet International Inc.	Response	February 17, 2014
Mr. Shmig	Reply	February 24, 2014

> Upon receipt of those submissions, the Board will consider its next step. Under section 16.1 of the *Code*, the Board is not required to hold an oral hearing. Therefore, this matter could be decided solely on the parties' written submissions.
>
> For ease of reference, the Board has included copies of the decisions cited herein. Nonetheless, the parties should comment in their submissions on any Board cases they believe relevant to this matter.
>
> (pages 8–9)

[14] The Board advised the parties that it was not required to hold an oral hearing and could decide the matter based solely on their upcoming submissions.

[15] During a phone conversation on January 22, 2014, Mr. Shmig advised the Board's Industrial Relations Officer (IRO) that he had not received the Board's decision requesting further submissions. The IRO emailed him a copy of *Shmig LD 3153*, *supra*, at the email address Mr. Shmig provided.

[16] Mr. Shmig did not file his submission by the deadline of February 3, 2014.

[17] The Board's IRO contacted Mr. Shmig on February 12, 2014. Mr. Shmig again stated he had not received the Board's decision which the IRO had emailed to Mr. Shmig immediately following their January 22, 2014 conversation.

[18] The IRO agreed to courier Mr. Shmig another copy of the Board's decision as confirmed in his February 14, 2014 cover letter:

> Attached please find the Board's Letter Decision (LD 3153) dated January 13, 2014, previously sent to you by courier. You stated that you had not received a copy of this decision.
>
> On January 22, 2014, you had a telephone conversation with the Board officer during which you said you had not received a copy of LD 3153 since you have been away in Toronto. The Board officer offered to email a copy of the decision to you, which our office did on the same date. Since we did not receive your supplementary submission by February 3, 2014 as requested by the Board in LD 3153, the Board officer contacted you by phone on February 12, 2014, at which time you said you had neither received the copy of the decision sent to you by courier nor the copy emailed to you by our office. I commented that if you had not received the emailed copy, you should have contacted our office to notify us of the situation. You then requested that we send a copy of the January 13, 2014 decision to your temporary address in the Toronto area, which we are now sending along with this letter.

[19] Mr. Shmig received the above letter on February 19, 2014, according to post office records.

[20] On February 17, Helijet's newly retained counsel wrote to the Board regarding the timeline for its response to Mr. Shmig's upcoming submission:

> Further to our telephone attendance of February 14, 2014, this will confirm that we now represent Helijet International Inc. with respect to the above referenced matter. All further correspondence may be directed to the attention of the undersigned.
>
> Also as discussed in our telephone call, I confirm that Helijet intends to file a supplementary submission in accordance with the correspondence from the Canada Industrial Relations Board to the parties dated January 13, 2014.

> We confirm your advice that although the time limited [*sic*] for Helijet to file a supplementary submission was identified in the January 13, 2014 letter as February 17, 2014, that the time for Helijet to file a supplementary submission will be extended until after such time as any submission from Mr. Shmig has been filed.

[21] On March 4, 2014, after exchanging voice mail messages, the Board's IRO wrote again to Mr. Shmig, as well as to counsel for Helijet, establishing a new timeline for their submissions. Mr. Shmig's submission would be due on March 11, 2014:

> We are writing further to our letter dated February 14, 2014, with which we resent to you the Board's Letter Decision (LD 3153) dated January 13, 2014.
>
> The February 14, 2014 letter was sent to you via Priority Courier. The tracking record from Canada Post shows that it was successfully delivered to you and you signed for it on February 19, 2014. As of today, we have not received your supplementary submission as requested by the Board in LD 3153. The Board's officer attempted to contact you by telephone on March 3, 2014 and left a message on your voice mail. On the morning of March 4, 2014, the Board's officer received a voice message you left on the evening of March 3, 2014, stating that you had received our February 24, 2014 letter and that you are working on your supplementary submission.
>
> In view of the foregoing, please refer to the following time table which sets out the time limits for parties to file submission(s):

Party	Submission	Due Date
Mr. Shmig	Supplementary submission	March 11, 2014
Helijet International Inc.	Response	March 25, 2014
Mr. Shmig	Reply	April 1, 2014

> Please ensure that the above time limits are respected, and the submissions are received by our office, along with a copy to the other party, on or before the due dates indicated.

[22] The IRO had sent this follow up letter to the same address he had used for the letter of February 14, 2014. Mr. Shmig had signed for that earlier letter.

[23] When the Board did not receive any submission from Mr. Shmig, the Board's IRO prepared a Report about his efforts to obtain the submissions the Board had requested:

> The February 14, 2014 letter along with LD 3153 was sent via Priority courier service. The tracking record from Canada Post shows that it was successfully delivered to Mr. Shmig and he signed for it on February 19, 2014.

> Since we were not in receipt of any supplementary submission from Mr. Shmig, the Board's officer attempted to contact Mr. Shmig by telephone on March 3, 2014 and left a message on his voice mail. On the morning of March 4, 2014, the Board officer received a voice message from Mr. Shmig which he left on the evening of March 3, 2014, stating that he had received our February 14, 2014 letter and that he is working on the supplementary submission. Our office sent a letter dated March 4, 2014 to Mr. Shmig (with a copy to the employer), which *inter alia*, set new time limits for the submissions and Mr. Shmig's due date was March 11, 2014. The March 4, 2014 letter was sent by priority courier to Mr. Shmig's address in the Toronto area.
>
> Our office has been checking the Canada Post Priority service tracking record with respect to the March 4, 2014 letter. The tracking record indicates that there was attempted delivery at Mr. Shmig's address at 10:12 a.m. on March 7, 2014 and a card was left for him indicating where the item can be picked up. As at March 14, 2014, the tracking record still shows that the item has not been picked up.

[24] In his March 17, 2014 letter, the IRO advised the parties that he was returning the file to the Board for adjudication.

[25] Mr. Shmig never picked up the Board's letters of March 4 and 17, 2014. The post office later returned those letters to the Board.

III. Analysis and Decision

[26] The Board is not required to hold an oral hearing in every case:

> 16.1 The Board may decide any matter before it without holding an oral hearing.

[27] The *Canada Industrial Relations Board Regulations, 2012* (*Regulations*) impose certain requirements for the drafting of a complaint:

> 40. (1) **A complaint must include**
>
> (*a*) the name, postal and email addresses and telephone and fax numbers of the complainant and of their legal counsel or representative, if applicable;
>
> (*b*) the name, postal and email addresses and telephone and fax numbers of any person who may be affected by the complaint;
>
> (*c*) a reference to the provision of the *Code* under which the complaint is being made;
>
> (*d*) **full particulars of the facts, relevant dates and grounds for the complaint;**
>
> (*e*) **a copy of supporting documents for the complaint;**
>
> (*f*) the date and description of any order or decision of the Board relating to the complaint;
>
> (*g*) an indication as to whether a hearing is being requested and, if so, the reasons for the request;

(*h*) a description of the order or decision sought;

(*i*) the date on which the complainant knew of the action or circumstances giving rise to the complaint; and

(*j*) particulars of the measures taken, if any, to have the complaint referred to arbitration under a collective agreement or the reasons why the arbitration did not take place.

(emphasis added)

[28] The Board, like many administrative tribunals, receives complaints and applications from unrepresented individuals. The Board attempts to balance all parties' interests if issues arise over the scope or precision of those pleadings. The Board described its approach in *Reid*, 2013 CIRB 693 (*Reid 693*):

[32] **As mentioned above, the Board is fully aware that Ms. Reid, like many unrepresented litigants, may not be familiar with the *Code*. But a complainant still has the ultimate obligation of going through his/her own material, including allegedly relevant documents, and drafting a complaint in accordance with the *Regulations*.** That obligation is not satisfied by filing hundreds of pages of documents and implicitly asking the Board to go through it and decide what, if anything, should form part of a complaint.

[33] It would be unfair in a DFR case for the Board to forego the essential *prima facie* case screening analysis of an unwieldy pleading and instead ask the respondents to provide their submissions. One of the goals of the *prima facie* process is to avoid the waste of resources which occurred in the past when respondents had to respond to every DFR complaint, no matter how deficient.

[34] The quid pro quo is that respondents must now take the time necessary to respond properly in those cases where the Board requests submissions after finding that a *prima facie* case exists.

[35] In this case, the Board is not prepared to dismiss Ms. Reid's complaint outright, though that is an available option in the right circumstances. While the complaint is unfocussed, Ms. Reid initially attempted to set out her concerns with regard to CUPW's alleged actions.

[36] However, it will be up to Ms. Reid to provide a proper and focussed pleading.

(emphasis added)

[29] In this case, the Board, after including case law excerpts about its limited jurisdiction under Part II of the *Code*, provided the parties with an opportunity to submit particulars. Those particulars, which are required under section 40 of the *Regulations* for any complaint, would have allowed the Board to decide whether it needed to hold an oral hearing. Alternatively, they could have allowed the Board to issue a decision without an oral hearing, in accordance with section 16.1 of the *Code*.

[30] What consequences flow from Mr. Shmig's failure to file his submissions, despite knowing of the Board's request, and his later inability to be contacted?

[31] In the Board's view, while it is important to give consideration to unrepresented complainants who may be unfamiliar with the Board's processes (see *Reid 693*, *supra*), all parties still have certain pleading obligations.

[32] For example, if the Board requests more particularized pleadings as part of its process to determine whether to hold an oral hearing, a party's failure to respond will not oblige the Board to hold an oral hearing. If such were the case, a failure to respond would essentially remove section 16.1 from the *Code*.

[33] The Board has the discretion to decide whether to hold an oral hearing; a party's failure to respond to Board requests will not eliminate that discretion.

[34] The Board is satisfied that the current circumstances justify the application of section 47(1) of the *Regulations*:

> 47. (1) **If a party fails to comply with a rule of procedure under these Regulations, after being allowed an opportunity for compliance by the Board, it may**
>
> (*a*) **summarily refuse to hear or dismiss the application, if the non-complying party is the applicant; or**
>
> (*b*) decide the application without further notice, if the non-complying party is the respondent.
>
> (emphasis added)

[35] In this case, Mr. Shmig claimed in a discussion with the IRO that he never received the Board's decision requesting more particularized pleadings. The IRO sent him another copy of the decision.

[36] When Mr. Shmig failed to provide the requested pleading, he claimed in another discussion with the IRO that the emailed copy of the decision had never reached him.

[37] Finally, after the Board granted Mr. Shmig an extension to file the requested particulars, Mr. Shmig failed to pick up two separate Board mailings which had been couriered to his last known address.

[38] Ultimately, it is not the Board's role to chase after a party for its pleading. The Board is satisfied that it provided Mr. Shmig with several opportunities to pursue his complaint. For whatever reason, Mr. Shmig chose not to do so.

[39] In these circumstances, the Board has decided to dismiss Mr. Shmig's complaint.

Graham J. Clarke
Vice-Chairperson